

# LABUAN BUSINESS ACTIVITY TAX (COUNTRY-BY-COUNTRY REPORTING) REGULATIONS 2017

PU (A) 409  
22 December 2016

IN exercise of the powers conferred by section 21 of the Labuan Business Activity Tax Act 1990 [Act 445], the Minister makes the following regulations:

## CITATION

- 1 These regulations may be cited as the **Labuan Business Activity Tax (Country-by-Country Reporting) Regulations 2017**.

## INTERPRETATION

- 2 In these Regulations, unless the context otherwise requires—

**"constituent entity"** means—

- (a) any separate business unit of an MNE Group that is included in the consolidated financial statements of the MNE Group or would be so included if equity interests in such business unit were traded on a public securities exchange;
- (b) any separate business unit of an MNE Group that is excluded from the MNE Group's consolidated financial statements solely on grounds of size or materiality;
- (c) any permanent establishment of any separate business unit of the MNE Group referred to in paragraph (a) or (b), provided that the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes;

**"ultimate holding entity"** means a constituent entity of an MNE Group that owns directly or indirectly a sufficient interest in one or more other constituent entities of such MNE Group and there is no other constituent entity of such MNE Group that owns directly or indirectly such interest in the first mentioned constituent entity;

**"MNE Group"** means a collection of multinational enterprises related through ownership or control such that it is required to prepare consolidated financial statements for financial reporting purposes under the applicable accounting principles or would be so required if the equity interest in any of its enterprises were traded on a public securities exchange which includes—

- (a) two or more enterprises the tax residence for which is in different jurisdictions; or
- (b) an enterprise which is a Labuan entity carrying on a Labuan business activity and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, or an enterprise which is resident in another jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in Labuan;

**"Country-by-Country Report"** means the report referred to in regulation 4;

**"financial year"** means an annual accounting period with respect to which the ultimate holding entity of an MNE Group prepares its financial statements;

**"reporting financial year"** means that financial year the financial and operational results of which are reflected in the Country-by-Country Report.

## **APPLICATION**

- 3** These Regulations shall apply to an MNE Group where—
- (a) the total consolidated group revenue in the financial year preceding the reporting financial year is at least three billion ringgit; and
  - (b) its ultimate holding entity or any of its constituent entities is a Labuan entity carrying on a Labuan business activity.

## **COUNTRY-BY-COUNTRY REPORT**

- 4(1)** For the purposes of these Regulations, a Country-by-Country Report with respect to an MNE Group shall contain—
- (a) the aggregate information relating to the amount of revenue, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates; and
  - (b) the identification of each constituent entity of the MNE Group setting out the jurisdiction of tax residence of such constituent entity, and the jurisdiction under the laws of which such constituent entity is incorporated, registered or established if it is different from the jurisdiction of tax residence of such constituent entity, and the nature of the main business activity or activities of such constituent entity.
- 4(2)** The financial information referred to in paragraph (1)(a) shall be denominated in Malaysian ringgit (RM).
- 4(3)** The information required to be reported under this regulation shall be from 1 January 2017
- 4(4)** The Country-by-Country Report shall be filed in the form prescribed under section 21A of the Act on an electronic medium, or through an electronic transmission, in extensible markup language format.

## **FILING OBLIGATION**

- 5** The ultimate holding entity of an MNE Group which is a Labuan entity carrying on a Labuan business activity shall file a Country-by-Country Report conforming to the requirements of regulation 4 with the Director General with respect to its reporting financial year within the period specified in regulation 7.

## **NOTIFICATION**

- 6(1)** Any constituent entity of an MNE Group which is a Labuan entity carrying on a Labuan business activity shall notify the Director General in writing if it is the ultimate holding entity on or before the last day of the reporting financial year.
- 6(2)** Where a constituent entity of an MNE Group which is a Labuan entity carrying on a Labuan business activity is not the reporting entity, the constituent entity shall notify the Director General in writing of the identity and tax residence of the reporting entity, on or before the last day of the reporting financial year.
- 6(3)** Any constituent entity of an MNE Group which is a Labuan entity carrying on a Labuan business activity who contravenes subregulation (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding two years or to both.

**6(4)** For the purpose of this regulation, "**reporting entity**" means the ultimate holding entity.

## **TIME FOR FILING**

**(7)** The Country-by-Country Report required under these Regulations shall be filed not later than twelve months after the last day of the reporting financial year.

## **USE AND CONFIDENTIALITY OF COUNTRY-BY-COUNTRY REPORT INFORMATION**

**8(1)** The Director General may use the Country-by-Country Report for the purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in Malaysia, including assessing the risk of non-compliance by constituent entities of the MNE Group with applicable transfer pricing rules, and where appropriate, for economic and statistical analysis.

**8(2)** The Director General shall not use the Country-by-Country Report as a substitute for a detailed transfer pricing analysis for the purpose of transfer pricing adjustments.

**8(3)** The Director General shall preserve the confidentiality of the information contained in the Country-by-Country Report at least to the same extent that would apply if such information were provided to the Director General under the provisions of the Convention on Mutual Administrative Assistance in Tax Matters.

## **FAILURE TO FILE COUNTRY-BY-COUNTRY REPORT**

**9(1)** Any person who fails to file a Country-by-Country Report in accordance with regulation 4, 5 or 7 commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding two years or to both.

**9(2)** Where a person has been convicted of an offence under subregulation (1), the court may make a further order that the person shall comply with the relevant provision of these Regulations within thirty days from the date the order is made or such other period as the court deems fit.

## **INCORRECT REPORT**

**10** Any person who—

- (a) makes an incorrect report by omitting the information required to be provided in accordance with regulation 4, on behalf of himself or another person; or
- (b) gives any incorrect information in relation to the information required to be provided in accordance with regulation 4, on behalf of himself or another person,

commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding two years or to both.